

Attorney Docket No.: UT-0031
Inventors: Mayer-Proschel et al.
Serial No.: 09/813,429
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REMARKS

Claims 1-4 are pending in the instant application. Claims 1-4 have been subjected to the following Restriction Requirement:

Group I, claim 1, drawn to a method of isolating human neuroepithelial precursor cells, classified in class 435, subclass 373;

Group II, claim 2, drawn to a method of transplanting human neuroepithelial precursor cells, classified in Class 424, subclass 93.7;

Group III, claim 3, drawn to a nonhuman animal transplanted with human neuroepithelial precursor cells, classified in class 800, subclass 2; and

Group IV, claim 4, drawn to a method for monitoring survival, etc. of human neuroepithelial precursor cells in a nonhuman animal, classified in class 435, subclass 7.21.

The Examiner suggests that these Groups are distinct.

Specifically, with respect to Groups III and IV, the Examiner has acknowledged their relationship as product and process of use but suggests that they are distinct because the nonhuman animal of Group II can be used in materially different methods.

With respect to Groups I-II and IV, the Examiner has

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acknowledged that there is no support in the MPEP for restricting these different methods. However, the Examiner suggests that they appear to be patentably distinct inventions because the methods require physically and functionally distinct elements.

Applicants respectfully traverse this Restriction Requirement.

MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct.

Applicants respectfully disagree with the Examiner's characterization of these inventions as distinct. It is respectfully pointed out that claims 2-4 of the instant application are all ultimately dependent from claim 1. Accordingly, these claims are related in that they all use the isolation method of claim 1 to obtain the human neuroepithelial precursor cells used.

Further, the second criteria of MPEP § 803 for proper restriction is that there would be a serious burden on the Examiner if the restriction is not required. Applicants believe that a proper search of the prior art relating to the method for isolating human neuroepithelial precursor cells of Group I would also reveal any prior art relating to uses of these cells such as set forth in the claims of Groups II-IV. Accordingly, Applicants respectfully disagree with the Examiner's suggestion that a serious burden would

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be placed upon the Examiner if restriction were not made.

Reconsideration and withdrawal of this Restriction Requirement is therefore respectfully requested.

However, in an earnest effort to be completely responsive, Applicants elect Group I, claim 1, with traverse.

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

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